IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 4TH APRIL 2007 / 14TH CHAITHRA 1929

WP(C).No. 5436 of 2007(V)

OS.406/1980 of PRL.MUNSIFF COURT, CHERTHALA

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PETITIONER:

NARAYANA PRABHU DASA PRABHU,
AGED 65, S/O.NARAYANA PRABHU, PUNNAKKAL,
CHERTHALA, VADAKKUMURI, CHERTHALA.

BY ADV. SRI.JOHNSON MANAYANI

RESPONDENTS:

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1. GIRI PRABHU RAMACHANDRA PRABHU,
AGED 73, ELECTRICAL WIRING CONTRACTOR,
PUNNAKKAL, CHERTHALA, VADAKKUMURI, CHERTHALA.

2. NARAYANA PRABHU, SUDHAKARA PRABHU,
PUNNAKKAL, CHERTHALA, VADAKKUMURI, CHERTHALA.

3. NARAYANA PRABHU, DAMODARA PRABHU,
PUNNAKKAL, CHERTHALA, VADAKKUMURI, CHERTHALA.
(DIED).

4. VASANTHA BHAI, W/O.LATE NARAYANA
PRABHU, GOPALA PRABHU, PUNNAKKAL, CHERTHALA,
VADAKKUMURI, CHERTHALA NORTH VILLAGE,
CHERTHALA.

5. USHA, D/O. OF DO. DO.

6. PRAKASH PRABHU, S/O.LATE NARAYANA
PRABHU, DO. DO.

7. SINDU, OF DO. DO.

8. BINDU OF DO. DO.

BY ADV. SRI.V.L.SHENOY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WP(C)5436/2007)

PETITIONER'S EXTS.

EXT.P1	TRUE COPY OF O.S.406 OF 1980 OF PRINCIPAL MUNSIFF'S COURT, CHERTHALA.
EXT.P2	TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER.
EXT.P3	TRUE COPY OF THE JUDGMENT IN CIVIL APPEAL NO.5930 OF 1999 OF THE SUPREME COURT OF INDIA.
EXT.P4	TRUE COPY OF THE JUDGMENT IN S.A.223 OF 1992 DT. 4.4.2006.
EXT.P5	TRUE COPY OF THE DEPOSITION OF PW6 IN O.S.406 OF 1980.
EXT.P6	TRUE COPY OF THE PETITION FILED BY THE PETITIONER AS I.A.2291 OF 2006 IN O.S.406 OF 1980.
EXT.P7	TRUE COPY OF THE OBJECTION TO EXT.P6.
EXT.P8	TRUE COPY OF THE ORDER OF THE LEARNED MUNSIFF IN I.A.2291 OF 2006 IN O.S.406 OF 1980 OF THE ADDITIONAL MUNSIFF, CHERTHALA.

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M.SASIDHARAN NAMBIAR, J.

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WP(C)No. 5436 OF 2007

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DATED THIS THE 4TH DAY OF APRIL, 2007

JUDGMENT

Petitioner is the first defendant in O.S.406 of 1980 on the file of Munsiff Court, Cherthala. The suit was originally disposed of. It was finally remanded by the Apex Court to this court for not formulating substantial question of law in the second appeal under Ext.P3 order. Thereafter, under Ext.P4 judgment, this court remanded the suit to the trial court granting an opportunity to the plaintiff to adduce oral evidence in the light of receipt of Ext.A19 and A20 by the first appellate court. It was made clear that in the light of any further oral evidence, if any to be adduced by plaintiff, defendants are also entitled to adduce rebuttal evidence. Thereafter, petitioner filed Ext.P6 application before the trial court to struck off all the other issues with regard to title except possession, which were framed by trial court. Under Ext.P8 order the learned Munsiff dismissed the application. It is challenged in this petition filed under Article 227 of Constitution of India.

2. Learned counsel appearing for petitioner and first respondent were heard. The argument of learned counsel

appearing for petitioner is that as the suit is only for a decree for injunction, the only question to be decided is possession and in the plaint itself possession of the defendants is admitted and in such circumstances all other issues are unnecessary and is not to be tried and hence Ext.P8 order is to be set aside and Ext.P6 petition is to be allowed.

3. The suit which was originally decreed, but was remanded by this court to consider afresh the rights claimed by the plaintiff as well as the defendants. The issues sought to be struck off were the issues framed originally and considered by the trial court, first appellate court and this court. Though possession of the defendants was admitted in the plaint, decree sought for is restraining defendants from taking income from the property or constructing any structures in the property or disputing the right and title of plaintiff which was disputed by defendants in the written statement. In such circumstances it cannot be said that the issues framed by court below are unnecessary for resolving the dispute involved in the suit. In such circumstances, I find no reason to interfere with that order. Petition is dismissed.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-